IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

LA.App..No. 309 of 2005(B)

LAR.491/1999 of PRL.SUB COURT, KOZHIKODE
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APPELLANT: RESPONDENT

STATE OF KERALA

BY GOVERNMENT PLEADER SMT. K.R.DEEPA
ADDL.ADVOCATE GENERAL

RESPONDENT: CLAIMANT

BENNET GEORGE HERMAN, 33/338,
EDAKKAD, EASTHILL, PUTHIYANGADI AMSOM,
KOZHIKODE.

BY ADV. SRI.THOMAS ANTONY

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.309 of 2005

Dated: September 12, 2007

JUDGMENT

Kurian Joseph, J.

This appeal is filed against the judgment and decree in L.A.R.No.491/1999 on the file of the Sub Court, Kozhikode. The acquisition is for the purpose of widening of East Hill - Ganapathi Kavu Road. Section 4(1) notification was published on 26.12.1995. The land acquisition officer fixed the land value at the rate of Rs.10113/- per cent. According to the claimant the land value prevailing in the area was around Rs.1 lakh per cent.

2. On the side of the claimant, Exts.A1 and A2 documents were produced. Ext.A1 is a pre-notification document and Ext.A2 is a post-notification document. The commission report was marked as Ext.C1. Ext.C2 is the plan.

3. The advocate-commissioner reported that the property is situated very near to important institutions like government guest house, pre-metric hostel, village office, post office, banks, theaters and commercial institutions. The East Hill and West Hill towns are only around 200 kms. away from the acquired property. The basis land is situated around 200 kms. away from the acquired land. The basis land did not have road frontage and it is lying on the side of a cut road. Moreover, it is wet land also. On the evidence of the claimant as well the advocate-

commissioner the Reference Court found that the basis land and the acquired land are not similar and similarly situated. It was also found that the acquired property is more valuable than the basis land. The commissioner also inspected the properties covered by Exts.A1 and A2. Ext.A1 is situated in Katcheri Village, about 150 metres away from the East Hill junction. It is a garden land. There is no direct access to the property and access is through a lane. It is a fairly large extent of property - 41.46 cents. That was sold for a total consideration of Rs.26 lakhs. True, there were kuzhikoors and the property was surrounded by a compound wall. As far as Ext.A2 is concerned, it is a post-notification document - after about one year of the notification. It is a small extent of 5.4 cents lying about 750 metres away from the East Hill junction. That also is a garden land and it was sold for Rs.4,90,000/-. There also the value of the building is not separately shown. However, going by the evidence of the advocate-commissioner and the indication of land value in Exts.A1 and A2, the market value would be around Rs.65,000 - 70,000/- at the time of the notification, according to the commissioner. Despite the absence of any contra evidence, the Reference Court limited the land value only to Rs.45,000/- per cent.

Having regard to the evidence available on record, the importance of the locality, the nature of the land as garden land, it cannot be said that the land value thus fixed by the Reference Court is excessive. In

L.A.A.No.1907/2002 also - acquisition covered by the same notification for the same purpose - this court has sustained the land value at the rate of Rs.45,000/- per cent. For all the above reasons, we do not find any merit in this appeal. It is accordingly dismissed.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-